

**LYNCHBURG CITY COUNCIL
Agenda Item Summary**

MEETING DATE: **July 8, 2003**

AGENDA ITEM NO.: **9**

CONSENT:

REGULAR: **X**

CLOSED SESSION:
(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: Consideration of Amending Provisions of Zoning Ordinance Section 35.1-44.1 of the City Code to Modify the Regulations of Properties Located in Locally Designated Historic Districts

RECOMMENDATION: Approval of the requested *Historic Districts Ordinance* amendments.

SUMMARY: It is proposed that the text of the *Historic Districts Ordinance* be amended to delete all references to the "Certificate of Appropriateness (COA) Permit," transfer authority over certain portions of the *Historic Districts Ordinance* from the Building Commissioner to the Neighborhood Services Manager and make other minor changes. The Historic Preservation Commission (HPC), the Planning Division and the Planning Commission recommended approval of the amendments.

OTHER INFORMATION: none

PRIOR ACTION(S):

April 21, 2003: Planning Division recommended approval of the amendments.
HPC recommended approval (5-0, with two members absent) of the amendments.
May 28, 2003: Planning Commission recommended approval (6-0, with one member absent) of the amendments.

FISCAL IMPACT: N/A

CONTACT(S):

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ATTACHMENT(S):

- Resolution
- PC Report
- PC minutes
- HPC Report
- HPC minutes
- *Historic Districts Ordinance* proposed amendments

REVIEWED BY: lkp

ORDINANCE

AN ORDINANCE TO AMEND AND REENACT SECTION 35.1-44.1 OF THE CODE OF THE CITY OF LYNCHBURG, 1981, RELATING TO HISTORIC DISTRICTS.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG:

1. An order to promote the health, safety and general welfare of the City that Section 35.1-44.1 of the Code of the City of Lynchburg, 1981, be and the same is hereby amended to read as follows:

Sec. 35.1-44.1. Historic districts (HD).

(a) Intent.

The purposes of the historic districts are to promote the public welfare through the creation of historic districts for the protection and preservation of historic buildings, structures, places, archaeological sites, and areas of historic interest (as a class of structural and environmental types) within the City of Lynchburg, as well as the development and maintenance of appropriate settings and environment for such buildings, structures, places and areas as provided by Section 15.2-2306 of the Code of Virginia (1950), as amended.

Some additional purposes of these districts are to stabilize and improve property values in the historic districts; encourage new buildings and developments that will be architecturally compatible with existing historic landmarks, buildings and structures; prevent the encroachment of additions or new buildings and structures that are architecturally incongruous with the environs of the historic districts; promote local historic preservation efforts, and encourage the identification and nomination of qualified historic properties and districts to the National Register of Historic Places and the Virginia Landmarks Register.

The preservation of historical places is intended to provide an educational resource and to foster a sense of pride in our heritage for succeeding generations, that they may appreciate and understand the history of our culture.

(b) Definitions.

The following definitions apply to this historic districts ordinance:

(1) Alteration: Any change, modification or addition to a part of or all of the exterior of any building or structure.

(2) Certificate of appropriateness (COA): The approval statement signed by the historic preservation commission chair and/or the secretary that certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, or demolition of all or a part of any building or structure within a historic district, subject to the issuance of all other permits needed for the matter sought to be accomplished.

~~(3) Certificate of appropriateness (COA) permit: The permit form signed by the historic preservation commission secretary that is accompanied by the certificate of appropriateness and provided to the inspections division for each certificate of appropriateness that is granted by the HPC, the secretary, or on appeal by city council. This permit form alerts the inspections division to activate the certificate of appropriateness.~~

(43) Commercial Historic Districts Design Guidelines: Downtown Lynchburg: A publication adopted by city council on September 25, 1986 and readopted by city council on December 10, 1991 that gives detailed guidance to property owners of the commercial historic districts who are contemplating changes or additions to their building or property; and assists the historic preservation commission by providing them with minimum standards to guide their decision making.

(54) Contributing property: Those properties which by reason of form, materials, architectural details and relation to surrounding properties contribute favorably to the general character of the historic district in which they are located.

(65) Demolition: The dismantling or tearing down of all or part of any building or structure and all operations incidental thereto.

(76) Exterior architectural features: The architectural style, general design and general arrangement of the exterior of a building, structure or object, including but not limited to the kind or texture of the building material and the type and style of all windows, doors, signs and other appurtenant architectural fixtures, details, features or elements.

(87) Historic district: A geographically defined area consisting of public and/or private property within the city, possessing a significant concentration, linkage, or continuity of sites, buildings or structures, areas of unique architectural value, landmarks or encompassing parcels of contiguous land united by past events or aesthetically by plan or physical development. A district may also comprise individual buildings or structures separated geographically but linked by association or history. A historic district shall further mean an area designated by city council as a historic district pursuant to the criteria established in (d)(1) of this ordinance. The historic district overlay zone defines the area in which the requirements of the historic districts ordinance shall apply. The historic district overlay zone shall be in addition to and shall overlay all other zoning districts where it is applied so that any parcel of land lying in the historic district overlay zone shall also lie within one or more of the other zoning districts provided by this ordinance.

(98) New construction: Any construction within a historic district that is independent and exclusive of an existing building or structure or part thereof in the historic district.

(409) Noncontributing property: A property so designated on the inventory map of historic districts and properties which are adopted as a part of this ordinance, being generally those properties which by reason of age, condition, amount of alterations, form, materials, architectural details and relation to surrounding properties do not contribute favorably to the general character of the part of the historic district in which they are located.

(4410) Repairs in like material and like design: Any work or all work involving the replacement of existing material with equivalent material for the purpose of maintenance, but not including any addition, change or modification in construction design.

(4211) Residential Historic Districts Design Guidelines: Building on the History of Lynchburg: A publication adopted by city council on September 25, 1986 and readopted by city council on December 10, 1991 that gives detailed guidance to property owners of the residential historic districts who are contemplating changes or additions to their building or property; and assists the historic preservation commission by providing them with minimum standards to guide their decision making.

(4312) Restoration: Any or all work connected with the returning to or restoring of a building, or part of any building, to its original condition through the use of original or nearly original materials.

(c) The historic preservation commission.

There is hereby created and established a historic preservation commission, hereinafter referred to as the HPC, formerly known as the board of historic and architectural review, which shall consist of seven (7) members.

(1) Role. The role of the HPC is to administer the city's historic districts ordinance and to provide professional assistance and guidance to property owners in achieving appropriate alterations to their historic properties.

(2) Composition. The members of the HPC shall be appointed by city council and shall be residents of the City of Lynchburg. At least one (1) member of the HPC shall be an architect and at least one (1) member shall

be an owner and a resident of property in a historic district that is defined as a neighborhood but excludes single-structure districts. Not more than one (1) person shall be appointed who is principally engaged in the buying and selling of, or investment in, real estate. All members shall have a demonstrated interest, competence and knowledge in historic preservation. At least two (2) members shall meet the Professional Standards Qualifications used by the National Park Service and published in the Code of Federal Regulations, 36 CFR Part 61.

(3) Terms of Office. All appointments shall be made for a term of three (3) years until they are reappointed or their successors are appointed. No member shall serve for more than three (3) consecutive terms. Within sixty (60) days after they occur, vacancies shall be filled by city council for the unexpired term.

(4) Organization; officers; meetings.

a. The HPC shall elect a chair and a vice-chair. The department of community planning and development shall designate an administrative liaison to act as the secretary to the HPC.

b. The HPC shall meet at such times as it may determine by resolution and in any event within thirty (30) days after notification by the HPC secretary of an application for a permit to erect, reconstruct, externally alter, move or restore, raze or demolish, a building, landmark, or structure noted lying within the confines of a historic district.

c. If any HPC member is absent without cause for three (3) consecutive meetings or is absent for four (4) meetings in any twelve- (12) month period, that member's position shall be deemed vacant.

d. A permanent record shall be kept of the resolutions, transactions, and determinations of the HPC. This record shall be kept and maintained in the department of community planning and development.

e. The HPC is authorized to adopt rules of procedure for its meetings and the administration of the historic districts ordinance.

(d) Historic districts.

(1) City council of the City of Lynchburg has adopted criteria for determination of landmarks, buildings, or structures to be designated as being historically significant. Any changes to said criteria shall be made by city council after receiving recommendations from the HPC.

(2) In order to execute the purposes and objectives of this ordinance, there may be created in the city districts to be known as "Historic Districts" in addition to any existing historic districts. A historic district may be a part or all of a neighborhood, site, structure or a combination thereof. The boundaries of such districts shall be as described in the ordinance as adopted by city council. The boundaries of such districts shall be shown on maps which shall be filed and maintained in the department of community planning and development.

(3) The procedure to be followed in establishing historic districts is specified in Section 35.1-17 of this code. However, due to the unique nature of a historic district designation relative to traditional zoning, consideration of designating an area as a historic district may be exempted by the city from the regulations cited in Section 35.1-17 with the exception of the public hearing requirements to appear in the local newspaper as specified in Section 35.1-19 of this code. The posting of a sign giving notice of intent to rezone may be waived by the city. In the case of historic district consideration, in addition to other requirements, a fee may be required from the petitioner in the amount set forth in the fee schedule adopted by city council to cover the cost of publishing legal notices for hearings before the HPC, the planning commission and the city council.

(4) A notice that a building may be designated as a "historic district" shall be sent by registered or certified mail to the present owners as disclosed by the landbooks of the city, which notice shall contain the following information: the location and street address; the reason why the building and/or the district in which it is proposed to be located is deemed to be of historic or architectural interest; a copy of the pertinent portions of

this ordinance restricting the altering or razing of said building; the place, time and date of the public hearing of the HPC.

(5) The HPC, the planning commission, city council, any petitioner with a petition signed by five (5) registered voters, or the owner of any landmark, building, or structure in the City of Lynchburg, including those listed on the Virginia Landmarks Register or the National Register of Historic Places, may make a written request of the HPC for the consideration of recommending the designation of such landmarks, buildings, or structures as a historic district. The HPC shall recommend the requested addition if, after a public hearing pursuant to Section 35.1-19, it considers said building to be of historic, architectural, or cultural merit as based on the criteria cited in subsection (d)(1).

(6) The HPC, the planning commission, city council, the owner or owners of any landmark, building or structure located within a historic district may make a written request of the HPC for the consideration of recommending the removal of the historic district designation from such landmark, building, or structure. Procedure for notification of a public hearing to remove a designation as a historic district shall be the same as the procedure to establish such designation.

(e) Historic marker.

The HPC shall designate an appropriate marker and may permit each owner of a historic landmark, building or structure to display the marker in an appropriate manner. In addition, the HPC may at its discretion design and display similar markers denoting "historic districts." The costs of making, inscribing, installing and maintaining such markers shall be paid for by the City of Lynchburg. The costs of making, inscribing, installing and maintaining private individual markers shall be paid for by the property owner.

(f) Unauthorized display.

It shall be unlawful for any person to display, without the authorization of the HPC, a marker or any imitation thereof as provided for in subsection (e).

(g) Certificate of appropriateness.

Within a historic district, no building or structure, including signs, and including non-contributing buildings and structures and signs, shall be erected, reconstructed, restored, demolished, or altered in any way that affects the external appearance of the building or structure, including such items as roofs, chimneys, fences, and color changes, unless the same is approved as being architecturally compatible with historic landmarks, buildings, or structures therein through the issuance of a certificate of appropriateness, also referred to as a COA, by the HPC, the secretary or by city council. A certificate of appropriateness permit that is granted by the HPC, the secretary or on appeal by city council shall be provided to the inspections division neighborhood services division and the inspections division from the secretary. ~~for each certificate of appropriateness that is granted by the HPC, the secretary, or on appeal by city council.~~ No building permit or demolition permit to authorize any erection, reconstruction, alteration or demolition that affects the external appearance of any landmark, building or structure, or part thereof in a designated historic district, shall be issued until a certificate of appropriateness is issued by the HPC or city council. The decision of the HPC shall be final except where an appeal is timely made to city council pursuant to subsection (j).

Certain minor actions, which are deemed not to permanently affect the character of the historic district, may be exempted from review by the HPC, but the secretary of the HPC shall be notified of the proposed actions and may review and approve the alterations administratively or refer the proposed alterations to the HPC. Such actions shall include the following and any similar actions which in the opinion of the HPC secretary will have no more effect on the character of the district than those listed:

Repainting resulting in the same color scheme, in a different color scheme, or in a color scheme previously approved by the HPC. (Initial painting of masonry surfaces is not exempted from review by the HPC.)

Addition or deletion of storm windows and doors, window gardens, awnings, temporary canopies or similar appurtenances and window air conditioners.

Addition of television or radio antennas, satellite dishes, skylights or solar collectors.

The ~~building commissioner~~ neighborhood services manager or his/her designee shall have the authority to order that work be stopped and that an application for the issuance of a certificate of appropriateness be filed in any case where in his/her opinion the action may exceed the conditions listed above. The ~~building commissioner~~ neighborhood services manager or his/her designee shall report this action to the HPC secretary; however, in all cases the decisions may be appealed to the HPC, and a determination shall be made by the HPC on such appeal within thirty (30) days.

(1) Notice to affected property owners when certificate of appropriateness is to be issued; hearing to be afforded affected property owners. Whenever the HPC finds that the issuance of a certificate of appropriateness and the exercise of the rights and privileges granted thereby will, or is likely to, materially and adversely affect the property or the value thereof of another within two hundred feet of the subject property, the HPC shall, before the issuance of the certificate of appropriateness, give due notice of its intention to do so to the owner of such affected property and afford such owner an opportunity to be heard with respect thereto, and the certificate of appropriateness shall not be issued until such notice is given and opportunity afforded. In cases where the HPC deems it necessary, it may hold a public hearing concerning the application after notice has been given as provided for in Section 35.1-19 of this code.

The time within which such certificate of appropriateness may be issued shall, if necessary, be extended for such additional time as is required to give such notice and allow such hearing.

(2) Procedure for review of application. Applicants for review involving alterations and/or additions to existing historic structures or the erection of any new structure within a historic district shall submit to the HPC appropriate documentation, which may include, where appropriate, preliminary drawings and outline specifications, including color samples and photographs.

a. As used herein, drawings shall mean plans and exterior elevations drawn with sufficient detail to show, as far as they relate to exterior appearances, the architectural design, including proposed materials, textures and colors, and including samples of materials and color samples and a plot plan of all improvements affecting appearances of walls, walks, terraces, accessory buildings, lights, and other elements.

b. Legible photographs of all sides of a structure to be reviewed for repair, alteration, or additions will be submitted to the HPC. In the event of new construction, legible photographs of the adjoining and opposite properties may be required.

c. Applications for maintenance involving only a color change will include samples of the proposed colors.

(3) Standards. All decisions of the HPC shall be consistent with standards established by the secretary of the United States Department of the Interior. In addition to using the secretary of the United States Department of the Interior's Standards to guide decisions, the HPC, or city council on appeal, shall consider the following items in considering the appropriateness of architectural features:

a. General form and composition of proposed construction (shape of proposed structure in plan, relationship between width and height of elevation).

b. Setback and placement on lot.

c. Exterior construction materials (textures, patterns, and colors).

d. Architectural detailing (molding on cornices, finals, and cresting on roofs, gable ornaments, lintels).

e. Roof shapes.

- f. Windows (relationship of width to height, location) and doors.
- g. Height.
- h. Porches (shape, style, size, location) and steps.
- i. Walls, fences, walkways, pools, fountains, gazebos, gates, sidewalks, streets, signs, and accessory structures.
- j. Enclosure (materials, location, height), such as outbuildings, roofed enclosures, and similar type structures.
- k. Other features that have an impact on the historic and/or architectural character of the property.

Such compatibility shall be based on a comparison with significant, similar structures within the district and the residential or commercial historic districts design guidelines, as adopted by city council. The HPC shall also consider the economic feasibility and impact of the proposed repairs, alterations, additions, or new construction.

(4) Action of HPC.

- a. Within thirty (30) days of receipt of an application for a certificate of appropriateness, the HPC shall meet to review such application. The applicant shall be informed of the time and place at which the HPC will consider the application, and the applicant shall have an opportunity to be heard. The HPC shall approve or deny the ~~request~~ application and notify the applicant of same within thirty (30) days after the first meeting.
- b. Certificates of appropriateness issued by the HPC shall expire of their own limitations six (6) months from the date of issuance, if work authorized thereby is not commenced within that time, and shall also expire and become void if such authorized work is suspended or abandoned for a period of ninety (90) days. Any period of time during which the use of such certificate of appropriateness is stayed, pursuant to appeal or court action, is excluded from the computation of the said ninety (90) days.
- c. The work authorized by the certificate of appropriateness shall be completed within twelve (12) months of the date of issuance of the certificate of appropriateness, unless, for good cause shown, the HPC determines that a longer period is warranted and the HPC secretary shall be notified by the ~~inspections~~ neighborhood services division of the completed work. If the work authorized by the certificate of appropriateness is not completed within the allotted twelve (12) months or within such longer period as may have been approved by the HPC, the secretary shall be notified by the ~~inspections~~ neighborhood services division and the applicant shall be required to apply in writing for an extension of time to complete the work authorized by the certificate of appropriateness. The HPC or the secretary may grant one or more ninety (90) day-extensions of time for completing the work authorized by the certificate of appropriateness. The failure to meet the deadlines in the certificate of appropriateness will result in the revocation of the ~~certificate~~ COA, and any work done after the owner has been notified of the revocation is punishable as a violation of the zoning ordinance.
- d. If the HPC disapproves such plans, it shall state its reason for so doing and shall transmit a record of the reasons therefore in writing to the ~~city building commissioner~~ neighborhood services manager or his/her designee and to the applicant. No further action shall be taken by the city building commissioner or his/her designee to issue a construction permit. The applicant may modify his/her application in regard to the HPC's recommendations and shall have the right to resubmit his/her application to the HPC for its recommendation.

(5) Action of the applicant.

Within ten (10) business days after the HPC shall approve a certificate of appropriateness, the secretary shall issue a certificate of appropriateness ~~with the certificate of appropriateness permit~~ for the work authorized and forward it to the neighborhood services division and the inspections division ~~for entering and enter it into the inspections division permit~~ department of community planning and development project tracking system.

(6) Issuance of the certificate of appropriateness.

a. If the HPC approves the application, it shall issue a certificate of appropriateness dated and signed by the secretary. The secretary shall also stamp all prints and other documents submitted to the HPC signifying its decision.

b. Any person to whom a certificate of appropriateness has been issued may commence work at his/her own risk during the fifteen- (15) day appeal period provided for in subsection (j).

(7) Notification by the ~~building commissioner~~ neighborhood services manager or his/her designee. The ~~building commissioner~~ neighborhood services manager or his/her designee shall notify the HPC secretary upon completion of work approved in the certificate of appropriateness.

(8) Required for demolition. Subject to the provisions of subsection (i) of this ordinance, no historic landmark, building or structure within a historic district shall be razed, demolished or moved until the razing, demolition or moving thereof is approved by the HPC, or, on appeal, by city council.

(h) Requirement to provide ordinary maintenance or repair.

(1) Property owners in historic districts (and citywide) shall not allow their buildings and structures to deteriorate by failing to provide ordinary maintenance or repair. The building commissioner or his/her designee is charged with such responsibilities regarding deterioration by neglect, as provided by the current BOCA National Property Maintenance Code. Historic properties must be maintained in accordance with the standards of the Uniform Statewide Building Code.

(2) Removal of exterior features for any reason, whether due to neglect, deterioration, damage or willful removal is a violation of this ordinance and subject to penalties as set forth in zoning ordinance Section 35.1-20(a). Removal of exterior features is not a violation of the historic districts ordinance if the removal is ordered by the building commissioner pursuant to the provisions of the Uniform Statewide Building Code.

(i) Demolition and moving. In addition to the right of appeal hereinafter set forth in subsection (j), the owner of a historic landmark, building or structure, the razing or demolition of which is subject to the provisions of subsection (g) hereof, shall, as a matter of right, be entitled to raze or demolish such landmark, building or structure provided that:

(1) The owner has applied to the city council for such right; and,

(2) The owner has for the period of time set forth in the time schedule hereinafter contained and at a price reasonably related to its fair-market value as determined by the current assessment on the city assessor's records or, upon the owner's request by an appraisal committee which shall be appointed by city council and composed of two (2) local licensed real estate brokers and a local banker, made a bona fide (specifics of which are to be determined by the HPC, which may include but not be limited to national and internet advertising) offer to sell such landmark, building, or structure, and, if necessary, the land pertaining thereto, to the city, or to any person, firm, corporation, government or agency thereof, or political subdivision or agency thereof, which gives reasonable assurance that it is willing and able to preserve and restore the landmark, building or structure and the land pertaining thereto; and,

(3) That no bona fide contract, binding upon all parties thereto, shall have been executed for the sale of any landmark, building or structure, and the land pertaining thereto, prior to the expiration of the applicable time period set forth in the time schedule hereinafter contained. Any appeal which may be taken to the court from the decision of city council, whether instituted by the owner or by any other party, notwithstanding the provisions heretofore stated relating to a stay of the decision appealed from, shall not affect the right of the owner to make the bona fide offer to sell referred to above. No offer to sell shall be made more than one year after a final decision by city council, but hereafter the owner may renew his/her request to city council to approve the razing or demolition of the historic landmark, building or structure.

(4) The time schedule for offers to sell shall be as follows: three months when the offering price is less than twenty-five thousand dollars (\$25,000); four months when the offering price is twenty-five thousand dollars (\$25,000) or more but less than forty thousand dollars (\$40,000); five months when the offering price is forty thousand dollars (\$40,000) or more but less than fifty-five thousand dollars (\$55,000); six months when the offering price is fifty-five thousand dollars (\$55,000) or more but less than seventy-five thousand dollars (\$75,000); seven months when the offering price is seventy-five thousand dollars (\$75,000) or more but less than ninety thousand dollars (\$90,000); and twelve months when the offering price is ninety thousand dollars (\$90,000) or more.

(j) Appeals.

(1) Whenever the HPC shall, in a final decision, deny an application for a certificate of appropriateness, the applicant for such certificate of appropriateness shall have the right to appeal to and be heard before the city council; provided that he/she files with the clerk of the city council within 15 days after the decision by vote of the HPC, a notice in writing of his/her intention to appeal.

(2) Upon receipt of such notice, the clerk of the city council shall promptly schedule a public hearing as soon as reasonably practical after complying with the appropriate notice requirements. Notice of the hearing shall be given as provided by Section 35.1-19 of this code. Each such appeal shall be accompanied by a check or money order in the amount set forth in the fee schedule adopted by the city council to cover the costs in connection with this notice.

(3) Opponents to the granting of certificates of appropriateness by the HPC shall have the right to appeal to and be heard before the city council, provided there is filed with the clerk of the city council within fifteen (15) days after the decision by vote of the HPC a written petition, signed by at least 25 registered voters of the city, indicating their intention to appeal. Upon receipt of such notice, the clerk of the city council shall promptly schedule a public hearing as soon as it is reasonably practical for city council after complying with notice requirements. Notice of the hearing shall be given as provided by Section 35.1-19 of this code. Costs of advertising appeal hearings requested by said opponents will be paid by the opponents in the amount set forth in the fee schedule adopted by the city council.

(4) On any such appeal, the final decision of the HPC appealed from shall be stayed pending the outcome of the appeal to city council, except that the filing of such appeal shall not stay the decision of the HPC if such decision denies the right to raze or demolish a historic landmark, building or structure. The city council shall conduct a full and impartial public hearing on the matter before rendering any decision. The same standards and considerations aforesaid in Subsection (g)(3) of this section shall be applied by city council as are established for the HPC. The city council may affirm, reverse or modify the decision of the HPC, in whole or in part. The decision of city council, subject to the provisions of Subsection i., shall be final. If approved, a certificate of appropriateness, signed by the clerk of the city council, shall be issued to the applicant.

(k) Appeal to the circuit court.

Within thirty (30) days after any final decision is rendered by city council pursuant to this section, an aggrieved party may appeal as a matter of right to the circuit court for the city by filing a petition at law setting forth the alleged illegality of the action by city council. The filing of the said petition shall stay the decision of the city council pending the outcome of the appeal to circuit court, except that the filing of such petition shall not stay the decision of city council if such decision denies the right to raze or demolish a historic landmark, building or structure.

(l) Conflict with statutes, local ordinances or regulations.

Whenever the regulations made under authority of this chapter require a greater width or size of yards, courts or other open spaces, require a lower height of building or less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this chapter shall govern.

Whenever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, courts or other open spaces, require a lower height of building or a less number of stories, require a greater percentage of lot to be left unoccupied or impose other higher standards than are required by the regulations made under authority of this chapter, the provisions of such statute or local ordinance or regulation shall govern.

(m) Assistance of city administration.

The departments, bureaus, divisions, boards, commissions, agencies, and other offices of the city government shall furnish to the HPC such available information and render it appropriate service as may be required for the exercise of the powers and performance of the duties and functions of the HPC. All city departments and agencies responsible for historic public buildings, monuments, districts, and places shall submit an COA application to demolish, move, or alter said structures or places to the HPC for review and recommendation.

(n) Acquisition of historic real property.

The HPC may recommend to city council that the city acquire in any legal manner any historic area, landmark, building or structure, land pertaining thereto, or any estate or interest therein which, in the opinion of the HPC, should be acquired, preserved and maintained for the use, observation, education, pleasure and welfare of the people.

(o) Injunctions.

Wherever any person has engaged in or is about to engage in any act or practice which constitutes or will constitute a violation of this ordinance, the ~~building commissioner~~ neighborhood services manager or his/her designee may make application to the circuit court for an order enjoining such act or practice, or requiring such person to refrain from such prospective violation, or to remedy such violations by restoring the affected property to its previous condition. Upon proof by the ~~building commissioner~~ neighborhood services manager or his/her designee that such person has engaged in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order or other appropriate order shall be granted to the ~~building commissioner~~ neighborhood services manager or his/her designee.

(p) Penalties.

For violations and penalties, see Section 35.1-20 of the zoning ordinance.

(q) Separability.

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

2. That this ordinance shall become effective upon adoption.

Adopted:

Certified:

Clerk of Council

LYNCHBURG PLANNING COMMISSION
Agenda Item Summary

MEETING DATE: **May 28, 2003**

ACTION: **X**

INFORMATION:

ITEM TITLE: Consideration of Amending Provisions of Zoning Ordinance Section 35.1-44.1 of the City Code to Modify the Regulation of Properties Located in Locally Designated Historic Districts

RECOMMENDATION: Historic Preservation Commission and Planning Division recommend approval of the *Historic Districts Ordinance* Amendments

SYNOPSIS: It is proposed that the text of the *Historic Districts Ordinance* be amended to delete all references to the "Certificate of Appropriateness (COA) Permit;" transfer authority over certain portions of the *Historic Districts Ordinance* from the Building Commissioner to the Neighborhood Services Manager and make other minor changes.

SUMMARY

The proposed amendments would:

- Eliminate all references to the "Certificate of Appropriateness (COA) Permit," including the definition, because it is an unnecessary additional step in the permitting process. The COA, which is completed after HPC action, suffices as proper notice to all pertinent divisions that alterations to a historic property have been approved or denied;
- Eliminate the procedure that requires the Certificate of Appropriateness (COA) Permit to be submitted to the Inspections Division;
- Transfer authority over certain portions of the *Historic Districts Ordinance* from the Building Commissioner to the Neighborhood Services Manager, as follows:
 1. The Neighborhood Services Manager or his/her designee shall have the authority to order that work be stopped and that an application for a COA be filed;
 2. The Neighborhood Services Manager or his/her designee shall notify the HPC Secretary upon completion of work authorized by the COA;
 3. The Neighborhood Services Manager or his/her designee may make application to the Circuit Court for an order enjoining an act or practice which constitutes a violation of the *Historic Districts Ordinance*.
 4. The Neighborhood Services Manager or his/her designee shall grant injunctions, restraining orders or other appropriate orders for violations of the *Historic Districts Ordinance*.
- Provide a copy of the COA to the Neighborhood Services Division and to the Inspections Division for entering into the Department of Community Planning and Development project tracking system.

OTHER INFORMATION: none

PRIOR ACTION(S):

April 21, 2003: Planning Division recommended approval of the amendments
HPC recommended approval (5-0, with two members absent) of the amendments

CONTACT(S):

Rachel Flynn / 847-1508, ext. 253
Tom Martin / 847-1508, ext. 226
Annette Chenault / 847-1508, ext. 258

ATTACHMENT(S):

- HPC Report
- HPC minutes
- Historic Districts Ordinance proposed amendments

THE DEPARTMENT of COMMUNITY PLANNING & DEVELOPMENT
City Hall, Lynchburg, VA 24504 804.847.1508

To: Historic Preservation Commission
From: Annette M. Chenault, Secretary
Date: April 21, 2003
RE: CONSIDERATION OF AMENDING PROVISIONS OF THE ZONING ORDINANCE SECTION 35.1-44.1 OF THE CITY CODE TO MODIFY THE REGULATION OF PROPERTIES LOCATED IN LOCALLY DESIGNATED HISTORIC DISTRICTS

SYNOPSIS

It is proposed that the text of the *Historic Districts Ordinance* be amended to delete all references to the “Certificate of Appropriateness (COA) Permit,” to transfer authority over certain portions of the Historic Districts Ordinance from the Building Commissioner to the Neighborhood Services Manager and to make other minor changes.

SUMMARY

The proposed amendments would:

- Eliminate all references to the “Certificate of Appropriateness (COA) Permit, including the definition”
 - Eliminate the procedure that requires the issuance of a Certificate Of Appropriateness (COA) Permit to be submitted to the Inspections Division
 - Transfer authority over certain portions of the *Historic Districts Ordinance* from the Building Commissioner to the Neighborhood Services Manager
 - Provide a copy of the COA to the Neighborhood Services Division and to the Inspections Division for entering into the Department of Community Planning and Development project tracking system.
-

Planning Division recommends approval of the *Historic Districts Ordinance* amendments.

REQUIRED ACTION

Consideration of the Planning Division’s recommendation.

BACKGROUND

The procedure that requires the issuance of a *Certificate Of Appropriateness (COA) Permit* to be submitted to the Inspections Division from the Secretary has been determined to be an unnecessary additional step in the process. The COA would suffice as proper notice to the Neighborhood Services Division that alterations to a historic property have been approved. Therefore, all references to the “*Certificate of Appropriateness (COA) permit*,” including the definition, are recommended to be deleted.

Currently, the Building Commissioner or his/her designee has the authority over certain portions of the *Historic Districts Ordinance*. The Building Commissioner’s designee was the Zoning Officer. Recent organizational changes in the Department of Community Planning and Development transferred the Zoning Officer position from the Inspections Division to the Neighborhood Services Division. It is necessary to amend the *Historic Districts Ordinance* to reflect this change in the organization and responsibility.

So that all pertinent divisions are kept informed, it is recommended that a copy of the COA be provided to the Neighborhood Services Division and to the Inspections Division and entered into the Department of Community Planning and Development project tracking system. This would provide a record for the Neighborhood Services Manager or his/her designee to track the COA to completion of the work.

PLANNING DIVISION RECOMMENDATION

Based on the preceding information and analysis, the Planning Division recommends the following:

That the Historic Preservation Commission recommends to the Planning Commission and City Council approval of the proposed amendments to the *Historic Districts Ordinance*, Zoning Ordinance Section 35-1.44.1 of the City Code, with the latest revision date of April 21, 2003.

This matter is hereby offered for your consideration.

Annette M. Chenault
Planner II and Secretary to the HPC

pc: Mr. L. Kimball Payne, III, City Manager
Mr. Walter C. Erwin, City Attorney
Ms. Rachel O. Flynn, Director of Community Planning & Development
Mr. W. Thomas Martin, City Planner
Mr. Bruce A. McNabb, Director of Public Works
Mr. R. Douglas DeJarnette, Fire Marshal
Ms. Lee Newland, City Engineer
Mr. Gerry L. Harter, Traffic Engineer
Mr. Karl Cooler, Building Official
Mr. Arthur L. Tolley, Zoning Official
Mr. Robert S. Fowler, Zoning Official

APPENDIX

Proposed Amended Zoning Ordinance text with revision date of 04/21/03

MINUTES FROM THE APRIL 21, 2003 - HISTORIC PRESERVATION COMMISSION MEETING

Consideration of Amending Provisions of Zoning Ordinance Section 35.1-44.1 of the City Code to Modify the Regulation of Properties Located in Locally Designated Historic Districts

Ms. Chenault explained the proposed amendments to the Historic Districts Ordinance, as detailed in the Historic Preservation Commission (HPC) report dated April 21. She said the most significant change was administrative in nature in response to the Zoning Officer positions being transferred from the Inspections Division to the recently created Neighborhood Services Division. The Inspections Division will continue to enforce Building Code issues, and the Zoning Officers, under the Neighborhood Services Division, will enforce Historic Districts issues.

Ms. Chenault further explained that completing a Certificate of Appropriateness (COA) "Permit" was an unnecessary additional step in the process and should be eliminated. The COA, which is completed after HPC action, suffices as proper notice to all pertinent divisions that alterations to a historic property have been approved or denied. Joyce Coleman, Assistant City Attorney, reviewed the proposed changes and had no major concerns.

Chair Holloway opened the floor for citizens to speak in support or opposition to the proposal. No one spoke in support or in opposition to the request.

After further discussion Commissioner Devening made the following motion, which was seconded by Commissioner Goldman and passed by the following vote:

"That the Historic Preservation Commission recommends to the Planning Commission and City Council approval of the proposed amendments to the *Historic Districts Ordinance*, Zoning Ordinance Section 35-1.44.1 of the City Code, with the latest revision date of April 21, 2003."

AYES:	Devening, Fischer, Goldman, Holloway, Mott	5
NOES:		0
ABSTENTIONS:		0